



## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Humberto A. Florian, M.D.; Decision and Order

On March 24, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Humberto A. Florian, M.D. (hereinafter, Registrant) of Anaheim, California. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FF0235451. *Id.* It alleged that Registrant is "without authority to handle controlled substances in California, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that the Medical Board of California, Department of Consumer Affairs (hereinafter, the Board) issued a Decision on November 21, 2018, to revoke Registrant's medical license. *Id.* at 2. On December 21, 2018, the Board issued an Order denying Registrant's Petition for Reconsideration of the Decision and Registrant's medical license was revoked. *Id.* The California Medical Board revoked Registrant's medical license following its findings, *inter alia*, that Registrant was grossly negligent, committed repeated negligent acts, failed to maintain accurate and adequate medical records, and violated the California Medical Practice Act. *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 C.F.R. § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

#### Adequacy of Service

In a Declaration, dated August 11, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Riverside District Office, Los Angeles Field Division, attempted to contact Registrant, including at his registered address in Anaheim, California, “to determine if he would voluntarily surrender his [DEA registration] in light of his lack of state authority to prescribe controlled substances.” Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 3 (DI’s Declaration), at 1-2. The DI stated that a receptionist at the registered address said that “[Registrant] had retired, but [the] office still forwarded mail to him.” *Id.* at 2. Following the issuance of the OSC, the DI traveled with another DI on April 2, 2021, to “the last known residence” of Registrant to attempt to serve Registrant with the OSC, but service was unsuccessful as “no one appeared to be at the residence at that time.” *Id.* On April 12, 2021, the Riverside District Office, Los Angeles Field Division mailed a copy of the OSC to Registrant’s last known residence via first-class mail and the mailing was not returned as undeliverable. *Id.* On May 14, 2021, the Los Angeles Field Division mailed a copy of the OSC to Registrant’s registered address via first-class mail with return receipt requested, to which the DEA received “an unsigned return receipt on May 24, 2021, indicating that the [OSC] had been delivered.” *Id.*; *see also* RFAAX 3, Appendix (hereinafter, App.) B. Finally, on May 20, 2021, the DI sent a copy of the [OSC] to Registrant via his registered email address and did not receive any error message that indicated that the email was not delivered. RFAAX 3, at 2.; *see also* RFAAX 3, App. C (copy of email). The DI also stated that a review of the email system showed that the email had been delivered. RFAAX 3, at 2. The DI concluded that, “[t]o date, neither [Registrant] nor any attorney representing [Registrant] has requested a hearing. Neither has [Registrant] nor any attorney for [Registrant] submitted a written statement.” *Id.* at 3.

The Government forwarded its RFAA, along with the evidentiary record, to this office on August 12, 2021. In its RFAA, the Government represents that “[Registrant] has not submitted a timely request for a hearing in this matter.” RFAA, at 1. The Government “seeks to revoke the

[DEA registration] of [Registrant] because he lacks authority to handle controlled substances in the State of California, the state where he is registered with DEA.” *Id.*

Based on the DI’s Declaration, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on or before May 20, 2021. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the DI’s Declaration and the Government’s written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant’s right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 C.F.R. § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 C.F.R. § 1301.43(e).

## **FINDINGS OF FACT**

### **Registrant’s DEA Registration**

Registrant is the holder of DEA Certificate of Registration No. FF0235451 at the registered address of 2090 S Euclid St. Ste. 104, Anaheim, CA 92802. RFAAX 1 (DEA Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules III through V as a practitioner. *Id.* Registrant’s registration expires on September 30, 2021. *Id.*

### **The Status of Registrant’s State License**

On June 22, 2018, Administrative Law Judge Abraham M. Levy of the Office of Administrative Hearings, State of California (hereinafter, CA ALJ), issued a Proposed Decision (hereinafter, CA ALJ Decision). RFAAX 3, App. A, at 17 and 30. According to the CA ALJ Decision, Registrant “committed gross negligence and repeated negligent acts, he failed to maintain adequate and accurate records relating to his treatment of Patient A, and he, in turn,

violated the Medical Practice Act.” *Id.* at 18. The CA ALJ Decision summarizes that Registrant “saw Patient A five times between March 2014 and July 2014, ordered a chest x-ray and a lab work-up, and despite abnormal findings on the x-ray indicating further follow-up was needed, [Registrant] failed to follow up on the x-ray findings or clinically assess Patient A’s lung condition.” *Id.* at 17. According to the CA ALJ Decision summary, “[o]n August 14, 2014, Patient A died from respiratory failure and interstitial lung disease due to Chronic Obstructive Pulmonary Disease (COPD), pulmonary hypertension, and small cell lung cancer.” *Id.* Further, according to the ALJ Decision, “[Registrant] failed to present any evidence of rehabilitation, or evidence showing he is amenable to probation, to justify placing him on probation.” *Id.* at 18. The CA ALJ Decision concluded that “public protection requires that [Registrant’s] license be revoked.” *Id.*

On July 31, 2018, the Board issued an Order of Non-Adoption of Proposed Decision, which ordered that the ALJ Decision was not adopted and that a panel of the Board would decide the case upon the record. *Id.* at 16. On November 21, 2018, the Board issued a Decision after Non-Adoption (hereinafter, Board Decision). *Id.* at 2 and 15. The Board Decision incorporated the factual findings of the CA ALJ. *Id.* at 2-4. The Board Decision ordered that Registrant’s medical license be revoked effective December 21, 2018. *Id.* at 15. On December 21, 2018, the Board issued an Order Denying Petition for Reconsideration that denied the Petition filed by Registrant for the reconsideration of the Board Decision. *Id.* at 1.

According to California’s online records, of which I take official notice, Registrant’s license is still revoked.<sup>1</sup> Medical Board of California License Verification,

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<sup>1</sup> Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

<https://www.mbc.ca.gov/License-Verification> (last visited date of signature of this Order).

California's online records show that Registrant's medical license remains revoked and that Registrant is not authorized in California to practice medicine. *Id.*

Accordingly, I find that Registrant is not licensed to engage in the practice of medicine in California, the state in which Registrant is registered with the DEA.

## **DISCUSSION**

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he

is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

According to California statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Cal. Health & Safety Code § 11010 (West, current with urgency legislation through Ch. 115 of 2021 Reg. Sess). Further, a “practitioner” means a person “licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.” *Id.* at § 11026(c). Because Registrant is not currently licensed as a physician, or otherwise licensed in California, he is not authorized to dispense controlled substances in California.

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant’s DEA registration be revoked.

## **ORDER**

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. FF0235451 issued to Humberto A. Florian, M.D. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Humberto A. Florian to renew or modify this registration, as well as any other pending application of Humberto A. Florian, for additional registration in California. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

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Anne Milgram,  
Administrator.

[FR Doc. 2021-20246 Filed: 9/17/2021 8:45 am; Publication Date: 9/20/2021]